



1 for lunch. Should I wait for Kate to get back?

2 SPECIAL MASTER: Probably a good idea. I didn't  
3 notice she was missing. Let's wait a minute.

4 (Whereupon, a brief break was taken.)

5 SPECIAL MASTER: We are back on the record, and  
6 Pete was going to start.

7 MR. WEINBERGER: After conferring with my  
8 colleagues, here is what we want to discuss with you  
9 as it relates to our discussions so far. And I think  
10 assuming that we can reach an agreement regarding what  
11 I am about to say, I think there's a number of other  
12 fields that we are probably prepared to concede on.  
13 We want to ensure that with respect  
14 to the data that we are not getting or the -- because  
15 of fields that are not being utilized and the overall  
16 production that we are not getting because of this  
17 will not then ultimately be used. Those things that  
18 are not being produced will not be used by you at any  
19 point in the case.

20 MS. FUMERTON: I think we need to hear the  
21 entirety of it.

22 MR. WEINBERGER: That is it.

23 MS. FUMERTON: Okay.

24 MS. SWIFT: If what you are saying is, if we  
25 don't produce a particular field, we can't later rely

1 same data that will be determined today?

2 MR. SHKOLNIK: Yes.

3 MS. SWIFT: That is what I wanted to know.

4 MS. MCENROE: Actually, that brings a little bit  
5 of a challenge for us. We are pulling March 20th  
6 trial date simultaneously, and that is going to make  
7 March 2nd very challenging for us. We can revisit  
8 that closer to March 2nd.

9 SPECIAL MASTER: It might be easier for them to  
10 do those at the same time. I do not know.

11 MS. FUMERTON: Special Master to clarify that  
12 approach, and we understand your direction, but it is  
13 clear that we are still objecting to the national  
14 scope and --

15 SPECIAL MASTER: You have made that very clear  
16 that you object to national scope. They will rule.  
17 If they rule in your favor, then I will follow their  
18 mandate. If they do not rule in your favor, we  
19 already know the mandate. So let's finish this up by  
20 dealing with the two fields that are outstanding.

21 MR. MOUGEY: 53 and 64.

22 SPECIAL MASTER: Is 52 patient date of birth?

23 MR. ACKERMAN: We recognize that date of birth is  
24 a field subject to HIPPA, but we would like to get a  
25 year of birth which is excluded. We would be okay

1 with a field that gave us the date of birth and a  
2 general category for anyone over the age of 89 at the  
3 time of service consistent with the regulation.

4 SPECIAL MASTER: I thought I remember the  
5 Defendants saying that they were okay with the year of  
6 the date of birth?

7 MS. MCENROE: One burden challenge on that, we  
8 have a birth date field, so changing it to the field  
9 could be a manual process. I am just putting it out  
10 there.

11 SPECIAL MASTER: Is the Defendants' objection to  
12 date of birth, full year of birth, anything other than  
13 the HIPPA regulation?

14 MS. FUMERTON: Not other than -- to clarify, I  
15 don't agree how he stated that. He stated one part of  
16 the regulation, but the analysis is looking at the  
17 totality of the data that is produced.

18 When we are talking about producing  
19 the birth year, the zip code, the prescriber, the  
20 person's doctor, we think that that year becomes PHI  
21 involved within HIPPA. We are not agreeing that is an  
22 exception that governs in all instances.

23 SPECIAL MASTER: Explain to me, Plaintiffs, what  
24 do you need by date of birth that you need for red  
25 flag analysis?

1 MR. PIFKO: One example, in CVS they talk about  
2 pattern prescribing where a doctor writes the same  
3 exact prescription for everyone who comes in the door.  
4 You always get Oxy 80, and everyone's diagnosis code  
5 is lower back pain. It does not matter if you are age  
6 18 or 88. Everyone is having the same thing. The age  
7 is relevant to the creditability of the --

8 SPECIAL MASTER: Sort of. Any other examples?

9 MR. WEINBERGER: It is under the pattern  
10 prescription category.

11 MS. SWIFT: Peter, that is one of your topics, if  
12 we were going to get to it, I wonder what you meant by  
13 that?

14 MR. WEINBERGER: That is a perfect example.

15 MR. ACKERMAN: Another example is a number of  
16 younger individuals were prescribed -- a lot of 18  
17 year olds were receiving 80 milligram of OxyContin or  
18 Oxycodone.

19 MS. FUMERTON: There is the burden argument to  
20 the extent of separate fields.

21 SPECIAL MASTER: If it is not maintained as a  
22 separate data field, you don't produce it. If it is a  
23 separate data field, my ruling is that you have to  
24 produce the year date of birth. So you can produce it  
25 by redaction. Then if you can't, you have to produce

1 the entire date of birth.

2 MS. FUMERTON: We understand that as a ruling,  
3 but we don't --

4 SPECIAL MASTER: You object?

5 MS. SWIFT: David, it is more than they have  
6 asked for.

7 MR. DELINSKY: David, there is literature when  
8 you provide zip code and date of birth --

9 SPECIAL MASTER: I am saying you can produce only  
10 year of birth.

11 MR. DELINSKY: But you said if you can't.

12 SPECIAL MASTER: If you decide the burden is so  
13 great that you don't want to change a date of birth  
14 field to just a year birth field, then you can choose  
15 to provide the entire date of birth.

16 MS. SWIFT: As far as an estimation of how much  
17 time to do this, we don't know.

18 MR. FARRELL: So respectfully from our experience  
19 with the variety of data we have used, sometimes we  
20 get it in different dates, months, dates and years.  
21 If you are exporting to Excel, there are conversions  
22 that make it rather simple, and it is a simple coding  
23 issue.

24 SPECIAL MASTER: Okay. What is the next one?

25 MR. MOUGEY: It is 64. There was some confusion